

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SPRY FOX, LLC, a Washington Limited
Liability Company,

Plaintiff,

v.

LOLAPPS, INC, a Delaware Corporation;
LOLAPPS MERGER SUB, INC., a Delaware
Corporation; 6Waves LLC., a Delaware
Limited Liability Company, and DOES 1-10,
inclusive,

Defendants.

Civil Action No. 12-cv-147

PLAINTIFF'S MOTION FOR LEAVE TO
FILE SUPPLEMENTAL AUTHORITY
RELATIVE TO DEFENDANTS' 12(b)(6)
MOTION

NOTE ON MOTION CALENDAR: May
31, 2012

I. PROCEDURAL POSTURE

On February 27, 2012, the Defendants filed a "Motion To Dismiss Plaintiff's Complaint For Infringement", arguing *inter alia*, that Plaintiff has failed to establish a claim of copyright infringement and that Plaintiff has failed to establish a claim of trade dress infringement. The motion was fully briefed and since the noted hearing date of March 23, 2012, the Court has taken the case under submission. On May 30, 2012, May 30, 2012, the Federal District Court in the New Jersey District issued an order on a Summary Judgment motion in *Tetris Holding et al. v. Xio Interactive, Inc.*, Civil Action No. 09-6115, (N.J. Dist. 2012) addressing the same issues.

II. PLAINTIFF'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY

Plaintiff Spry Fox, by and through its undersigned counsel, respectfully requests leave to submit this notice of supplemental authority regarding its position on the sufficiency of the Complaint. In each of their submissions in support of its Motion to Dismiss, the Defendants have relied upon case law interpreted in the attached Exhibit A by a sister court, the District of New Jersey on May 30, 2012 and, as such, the opinion is persuasive authority. Plaintiffs submit this notice of supplemental authority is to apprise the Court of this order. Defendants' counsel are aware of the decision as a part of the instant defense team participated as trial defense counsel in that case. A true and accurate copy of *Tetris Holding et al. v. Xio Interactive, Inc.*, Civil Action No. 09-6115, (N.J. Dist. 2012) is attached as Exhibit A hereto.

DATED this 31st day of May 2012.

LOWE GRAHAM JONES^{PLLC}

s/Mark L. Lorbecki

Mark L. Lorbecki, WSBA No. 16,796

Richard R. Alaniz, WSBA No. 26,194

alaniz@lowegrahamjones.com

701 Fifth Avenue, Suite 4800

Seattle, Washington 98104

T: 206.381.3300

F: 206.381.3301

Attorneys for Spry Fox, LLC.

CERTIFICATE OF SERVICE

I certify that on May 31, 2012 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will electronically send notification of such filing to:

Jofrey M. McWilliam, Esquire
jmcwilliam@byrneskeller.com
Bradley S. Keller, Esquire
bkeller@byrneskeller.com

Byrnes Keller Cromwell LLP
1000 Second Avenue, 38th Floor
Seattle, WA 98104

Sonali D. Maitra, Esquire
smaitra@durietangri.com
Ragesh K. Tangri, Esquire
rtangri@durietangri.com

Durie Tangri LLP
217 Leidesdorff Street
San Francisco, CA 94111

s/ Caitlin Blazier Kavanagh

LOWE GRAHAM JONES PLLC


701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301